IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES	)	
	)	**DEFENSE MOTION FOR**
v.	)	**RECONSIDERATION AND FOR**
	)	**MISTRIAL: SPECIFICATIONS**
MANNING, Bradley E., PFC	)	**4, 6, 8, 12, 16 OF CHARGE II**
U.S. Army, (b) (7)(C)	)	**(18 U.S.C. §641 OFFENSES)**
Headquarters and Headquarters Company, U.S.	)	
Army Garrison, Joint Base Myer-Henderson Hall,	)	DATED: 24 July 2013
Fort Myer, VA 22211	)	

RELIEF SOUGHT

1. COMES NOW PFC Bradley E. Manning, by counsel, pursuant to applicable case law and Rule for Courts Martial (R.C.M.) 905(f), requests that this Court reconsider its Supplemental Ruling on Defense Motions for Findings of Not Guilty dated 24 July 2013 ("Ruling") and declare a mistrial as to all the 18 U.S.C. Section 641 offenses. The Defense submits that the Government has made an utter mess of the section 641 offenses by pursuing one charge (that PFC Manning stole databases) and at the last-minute pursuing a different charge (that PFC Manning stole information). The Defense did not know that "database" or "records" meant "information" and has suffered irreparable prejudice as a result.

STANDARD

2. Under R.C.M. 915, a military judge may declare a mistrial when "manifestly necessary in the interest of justice because of circumstances arising during the proceedings which cast substantial doubt upon the fairness of the proceedings."

EVIDENCE

3. The Defense requests that you consider the Attachment (Affidavit from Mr. Cassius Hall). The Defense also requests that the Court consider the evidence adduced by the Government during the merits phase of the trial.

ARGUMENT

A. The Defense Did Not Know that Either "Databases" or "Records" Included "Information" until 24 July 2013, After the Close of Evidence

4. The Court has ruled that the word "databases" includes the records and information contained in the databases, pointing to the definition of "database" in Black's Law Dictionary. The Court states that "information is necessarily included within the definition of both records or databases." *See* Ruling p. 6. The Court does not provide any authority for this conclusion of law and the Defense does not believe that this conclusion of law can be reconciled with the Charge Sheet and the presentation of evidence in this case. Nor can it be reconciled with federal case law. *See* Defense R.C.M. 917 Motions.

i. "Information" is Not Necessarily Included in the Definition of "Databases" Based on the Use of The Term "Databases" In This Case

5. The Court has accepted the Government's argument that databases = records = information. If this were the case, how difficult would it have been for the Government to actually charge "information" in the Charge Sheet? Why did it use the word "database"? Why are we in a position, three years into the case and after the presentation of all the evidence, where we have to read one word ("information") into another word ("database" or "records")? Why is it that the Defense is the party that is penalized for an apparent misunderstanding of the charged property? Why is the Government not held to task for using one word ("database") when it apparently meant another ("information")?

6. If one thing should be clear in a Charge, it is the property that is alleged to have been stolen or converted. Why is an ambiguity in the Charge placed at the feet of the Defense, rather than the Government? The fact that the Court needed to look to Black's Law Dictionary, the parties submitted approximately 50 pages of motions on the topic, the Court heard multiple oral arguments on the issue, and the Court took over a week to decide the motion, all suggest that the issue is not as clear as the Court now makes it seem. If it were apparent to everyone that database = information, why the need for protracted litigation over the issue?

7. Moreover, even though Black's Law Dictionary defines database as it does, there are other logical understandings of the word "database." The Government charged that PFC Manning stole a database containing X number of records. If database = records = information, then the charge would have referred to PFC Manning stealing "a database *of* X number of records." In other words, the Government's charging of database *containing* X number of records suggest that the database refers to the receptacle for the information or records. Furthermore, although the Court was apparently not persuaded by this argument, one could easily have an empty database (i.e. one that does not contain records or information). For instance, we heard testimony that the State Department contracted with an outside agency to create the Net-Centric Diplomacy database. *See* Mr. Charlie Wisecarver. Presumably, when it contracted with this outside agency, it was to create the receptacle for the various cables that were added later. Further, various witnesses testified that the specific databases were "systems" or "programs" and did not indicate that the database was coextensive with its informational content. *See* Mr. Wyatt Bora ("CIDNE is a reporting and querying *system*."). The point of this is to illustrate that there are different, and equally reasonable, understandings of the word "database." Simply because the Court prefers one interpretation over another does not mean that the Defense was on notice of the interpretation that the Government has now urged the Court to accept and that the Court has apparently accepted.

8. The Government itself sought to prove that PFC Manning stole "databases" (i.e. the receptacle or infrastructure associated with maintaining the records). Approximately 95% of its valuation evidence took the form of proving the value of the databases, not the information or the records. This shows that the Government itself, when it used the word "databases" in the Charge Sheet meant databases, not information or records. The Defense, seeing all the evidence that the Government was adducing on the database, was eminently reasonable in assuming that when the Government charged "database" it meant "database" (the physical receptacle for the information). [1]

9. Even the definition accepted by the Court presupposes that a database is *more* than simply the information it contains. The definition relied on by the Court refers to a database as "a compilation of information arranged in a systematic way and offering a means of finding specific elements it contains, often today by electronic means." Ruling at p. 4. Even under this definition, a database contains elements other than information—it includes the organizational structure ("arranged in a systematic way") and search capabilities ("offering a means of finding specific elements it contains"). These are necessarily included in the concept of database (indeed, they are what distinguishes a "database" from "data"). And now the Court has concluded that the Government does not need to actually prove what the Government charged—the entire database, to include elements other than information. This fundamentally changes the nature of the offense and irreparably prejudices the accused.

ii. Federal Case Law Definitively Establishes that "Information" is Not Included in "Records"

10. Federal case law definitively establishes that "information" is not necessarily embraced within the concept of "records" within the meaning of section 641 for the following reasons:

a) One federal circuit, the Ninth Circuit, does not accept that information can fall within section 641. *See United States v. Chappell*, 270 F.2d 274, 277 (9th Cir. 1959); *United States v. Tobias*, 836 F2d 449 (9th Cir. 1988). Accordingly, information cannot ever be a "record" within the meaning of section 641 under this circuit's interpretation. Another federal circuit has expressed reservation over using section 641 to charge information. *See United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980). Given these courts' interpretation of information, it cannot be said that the word "records" necessarily encompasses information.

b) Federal courts that have accepted that section 641 applies to information have uniformly held that information falls within the "thing of value" prong of section 641, not the "records" prong of section 641. *See United States v. DiGilio*, 538 F.2d 972, 978, fn 10 (3rd 1976) ("The government obviously did not consider this merely a theft of information case, because the indictment charges defendants only with converting to their use government records. Section 641 also prohibits conversion of any 'thing of value', and the government would presumably rely on this term in an information case"); *United*

[1] The Defense also believes that the word database can refer to the combination of the "receptacle" and its records, but it cannot refer to the records alone. The Defense does not believe that database can fairly be read to include information for the reasons identified herein, and for the reason that databases do not always contain information (e.g. one may have a database of videos, music, photographs, etc.).

States v. Jordan, 582 F.3d 1239, 1246 (11th Cir. 2009) (indictment under §641 alleged that defendant's "delivered the printouts which as property of the United States had a value in excess of $1000"; in a separate count, indictment alleged that defendant received "a thing of value of the United States, that is, information contained in the NCIC records."); *United States v. Girard*, 601 F.2d 69, 71 (D. Conn. 1979) ("we are impressed by Congress' repeated use of the phrase "thing of value" in section 641 and its predecessors. ... The word "thing" notwithstanding, the phrase is generally construed to cover intangibles as well as tangibles. ... Although the content of a writing is an intangible, it is nonetheless a thing of value"). If this is the case—i.e. information and records are two different things under section 641—then how can "information" be fairly encapsulated within the concept of records?

c) All federal case law where "information" was alleged to have been stolen actually alleged *in the charge sheet* that information was stolen. *See e.g. United States v. Jeter,* 775 F2d 670, *680-1 (6th Cir. 1985) ("The government charged that Jeter 'did willfully and knowingly embezzle, steal, purloin and convert to his own use and the use of others, and without authority did sell, convey and dispose of records and things of value of the United States, the value of which is in excess of $100.00, to wit, *carbon paper and the information contained therein* relating to matters occurring on October 5, 1983, before a grand jury'."); *United States v. DiGilio*, 538 F.2d 972 (3rd 1976) (government charged that that the defendants converted to their own use "records of the United States; that is, *photocopies of official files* of the Federal Bureau of Investigation"); *United States v. Jordan*, 582 F.3d 1239, 1246 (11th Cir. 2009) (indictment under §641 alleged that defendant's "delivered the printouts which as property of the United States had a value in excess of $1000"; in a separate count, indictment alleged that defendant received "a thing of value of the United States, that is, information contained in the NCIC records."). Federal case law does not rely on reading into a word like "database" or "record" the concept of information.

The Defense, and the accused, should not be penalized for being aware of federal case law on section 641. As the Defense argued in its motion to dismiss, *every* federal case where the theft of information was alleged *actually charged* theft of information. The Court failed to reference this fact in its Ruling, apparently believing that such a factor was unimportant to its disposition. However, such a factor is critical—since this will be the only prosecution to be maintained based on theft of "information" where "information" was not actually charged. A federal accused should not fare better than a military accused in terms of the notice provided to him under federal law (i.e. a federal accused's Charge Sheet will state that the accused stole "information", while a military accused must extrapolate "information" from the word "database"). If the Government chooses to incorporate federal law, then federal law in terms of charging and proving the offense, must be followed.

11. The Court also failed to reference the cases cited by the Defense (*United States v. Marshall*, No. 08-0779 (C.A.A.F. 2009) and *United States v. Veloria*, 2011 WL 1330779) that indicate the importance of the charging decision in terms of what it provides notice of. This is presumably because these cases involved variances, whereas this Court believes that no variance is required because the specification put the accused on notice of the charges. However, in those cases, the difference between the charges and proof was arguably less significant than it is here. Here, the

very property at issue is subject to dispute. This is, in the Defense's view, more critical than who the accused allegedly escaped from, or who the money technically belonged to. If those cases concluded that there was a fatal variance between pleadings and proof, so too should have been the case here. The Government never did establish that PFC Manning stole "databases" – whether one defines databases as the receptacle alone, or the receptacle plus the records in that receptacle. And now the Court has given the Government a get-out-of-jail free card by allowing the Government to avoid the necessity of proving the value of the receptacle, even though the Government itself embarked on a mission to prove the value of the receptacle. In short, not even the Government knew what it was proving when it charged and pursued the section 641 offense.

B. The Defense Has Been Irreparably Prejudiced by the After-the-Close-of-Evidence Ruling that Databases = Information

12. Based on the Defense's knowledge of section 641 case law, the Government's insistence that it was proving theft of "databases", the Government's proffer in its Instructions that it would value the "database", the Government's overwhelming evidence as to the cost of the databases, and Mr. Lewis' repeated assertions to the Defense that he did not know why he was testifying and could not value information, the Defense defended this case by maintaining that PFC Manning did not steal or purloin the *databases*—not that PFC Manning did not steal or purloin information contained in the databases.

13. Now, after the close of evidence, the Court has grafted onto the Charge Sheet the word "information" – something that the Defense did not know it had to defend against until *after* it had cross-examined Government witnesses and *after* it had called its own witnesses. In short, the Defense did not know of the case to meet until 24 July 2013, almost two months into the trial, and the day before closing arguments. The Defense is now left to hope that the Government has not presented enough evidence to prove a charge that the Defense did not actually defend against and it does not believe the Government actually charged.

14. If the Defense had known that when the Government charged databases, it really meant information, the Defense would have defended this case very differently. The inability to do this, and the after-the-close-of-evidence notification that "database" apparently equals "information," has prejudiced the Defense irreparably.

15. First, the Defense would have challenged by way of motion in the summer of 2012 whether section 641 could even apply to information (when it brought all its other motions). As it stood now, the Defense had one day to provide the Court with case law on the issue. After a ruling on the issue in the summer of 2012, the Defense would have tailored its case accordingly.[2]

16. Further, and more importantly, if the Defense knew that "information" is what was alleged to have been stolen or purloined and that the section 641 offenses would turn in part on whether the information had a value of more than $1000, the Defense would have requested a Government-appointed expert (much like a computer forensics expert or a security expert) so that the expert could have testified in the Defense's case-in-chief. *See* R.C.M. 703(d). If this

[2] The Defense would also have argued that one cannot have a theft of information where the Government has not lost possession of the original information. From the Court's Ruling, it appears that the Court has already made this determination based on a footnote in a Fourth Circuit case without the Defense being able to advance this argument. *See* Ruling p. 6.

request were denied, the Defense would have sought out an economist or other expert with knowledge about the value of information to testify and provide a countervailing opinion to Mr. Lewis.

17. The Defense would also have requested an expert on counter-intelligence to understand the specifics about the artificial market that Mr. Lewis testified about. This would have enabled the Defense to better cross-examine Mr. Lewis on his opinion on the value of the information. In addition, the Defense would have had this expert testify to the artificial nature of the "spy vs. spy" market that Mr. Lewis relied upon. Such a witness could have testified regarding how the amount paid for any item has little to do with the information within the item and more to do with establishing a relationship with the seller. Additionally, this witness could have testified that sometimes a government would purchase information for reasons other than to establish a relationship with the seller. For instance, a government may knowingly purchase information from a double agent just to see what the United States is willing to sell. This would demonstrate that the thieves' market relied upon by Mr. Lewis does not reflect an accurate assessment as to the worth of information itself.

18. Additionally, the Defense would have filed a motion to preclude Mr. Lewis from testifying and from being qualified as an expert. The Defense would have fully briefed this issue with reference to relevant case law. The Defense interviewed Mr. Lewis on numerous occasions prior to the case and Mr. Lewis repeatedly indicated that he did not know why he was testifying, he did not consider himself an expert on the value of information, and he would not be able to provide any value for documents. In fact, on the Friday prior to Mr. Lewis testifying on the Monday, he still held this position. *See* Affidavit of Mr. Cassius Hall. After apparently being coached/prepped by the Government, Mr. Lewis' opinion suddenly changed and he now felt qualified to opine as to the value of the information. Mr. Lewis' opinion lacked reliability and any of the hallmarks of expert testimony. If the Defense had known that this would now be *the* evidence on valuation (rather than the mountains of evidence the Government adduced regarding the cost of creating the database), the Defense certainly would not have proceeded as it did. The Defense would also have sought the underlying documentation that Mr. Lewis chose not to use to verify his valuation guess in order to see if it could truly be compared with the charged records in this case. Given the unreliability of Mr. Lewis' testimony, the Defense still submits that this Court should have granted the motion to strike his testimony. *See United States v. Horning*, 409 F.2d 424 (4th Cir. 1969).

C. The Defense Has Been Irreparably Prejudiced By the Court's Ruling that Even Though Copies Were Apparently Stolen or Converted, the Government Can Value the Originals

19. The Court also has apparently accepted the Government's position that there is no distinction between original records and copies of records both for identifying what was allegedly stolen and for placing a value on it. *See* Ruling, p. 7, 8. The Court, along with the Government, conflates two distinct sets of records (the original records and the digital records) in order to potentially make out a 641 offense. The Court states:

> The Government is charging the accused with stealing and purloining the databases, electronic records, and information therein, at issue by accessing the relevant database, extracting the records from the database management system

> structure, placing the information on private platforms or digital media while in the 2nd Brigade Sensitive Compartmented Information Facility (SCIF) at Forward Operating Base (FOB) Hammer, and asporting the downloaded records, and information contained therein, to the accused's personal platforms or digital media outside the SCIF in his housing unit.

See Ruling, p. 7. Here, the Court fails to distinguish between the original records ("extracting the records from the database management system") and the copies of the records ("asporting the downloaded records ... to the accused's personal platforms"). Further confusing the issue is the Court's next sentence: "The Government's theory is that the accused knowingly converted the records ... sending them to WikiLeaks." *Id.* at p. 7-8. Clearly, here there is no question that the records that PFC Manning sent to WikiLeaks were *copies* of records that he maintained on CD. However, the Court is allowing the Government to argue and introduce value of the production of originals when what the Government is saying is that PFC Manning converted the copies.

20. The Court believes that "SPKC of electronic data doesn't compare neatly to cases where the defendant made photocopies of government records, replaced the originals, and SPKC the photocopies. With SPKC, there are no copies to steal until the accused accesses the digital information and makes the extraction. The original digital database and records remain in the database management system during and after extraction." *Id.* at p. 7. The Defense sees no distinction between physical copying (in the form of photocopying or taking a picture) and digital copying. And there is no authority anywhere in the section 641 case law for allowing the cost of production of original records to be valued when what is stolen or converted are the copies. *See e.g. United States v. DiGilio*, 538 F.2d 972, 977 (3rd Cir. 1976)(court held that the "a duplicate copy is a record for purposes of the statute, and duplicate copies belonging to the government were stolen." In terms of valuing this *duplicate* copy, the court held: "Irene Klimansky availed herself of several government resources in copying DiGilio's files, namely, government time, government equipment and government supplies."); *United States v. Hubbard*, 474 F. Supp. 64 (D.C.D.C. 1979) (court allowed prosecution to proceed on theory that "the copies, allegedly made from government documents, by means of government resources, are records of the government, and thus the copies were stolen").

21. The Court draws a distinction between cases "where the defendant made photocopies of government records, replaced the originals, and SPKC the photocopies. With SPKC, there are no copies to steal until the accused accesses the digital information and makes the extraction. The original digital database and records remain in the database management system during and after extraction." *Id.* The Defense does not understand this apparent distinguishing basis. How is this any different, for instance, than seeing a classified memo on a desk and taking a picture of it (without moving it) and then sending the picture of it to someone not authorized to receive it? There is no support for treating copying of digital information any differently than copying of physical information and the Government has provided none. The Defense, based on a good-faith reading of section 641 case law, was not on notice that it would have to defend against the value of stolen originals when it is clear that what was potentially stolen were copies.

22. This is exactly the sort of mix-and-match theory of valuation that the Defense cautioned against in its Motion to Dismiss and that the Defense believes is not permitted by the section 641

case law. The Court's ruling, after the close of evidence, that the Government can introduce value of the original copies even if copies were stolen (because "electronic data doesn't compare neatly to cases [involving tangible data]") has irreparably prejudiced the Defense.

23. The Defense allowed the Government, in its Stipulations of Expected Testimony, to bring in testimony related to the cost of production of original records. Since, based on a good-faith (and the Defense submits, correct) reading of the section 641 case law, this evidence would be irrelevant where the accused stole a copy of a record, the Defense did not object to its introduction or cross-examine on it. If the Defense had known that the Court would permit the Government to allege that PFC Manning stole copies (without actually even having to amend the charge sheet), but prove the value of creating the originals, the Defense would have vigorously cross-examined all the Government's witnesses on this. The Defense would never have entered into several of the Stipulations of Expected Testimony if it were at all apparent that the Government would be allowed to value original records, rather than databases.

D. The Defense Is Not At Fault For Failing to Request Further Specificity

24. The Court appears to fault the Defense for not requesting additional specificity in the Bill of Particulars on the *res* alleged to have been stolen. *See* Ruling ("In the bill of particulars, the Defense posed questions with regard to the Government's theory of prosecution. The Defense did not seek more specificity as to the items charged. Nor did the Defense seek clarification after receiving the Government's response."). The Court ignores the fact that there was no need to request "further clarification" given that the Government stated that it was "clear" what property was alleged to have been stolen or converted—specific, identifiable databases (CIDNE, NCD and SOUTHCOM). The Court indicated at the time that the details provided by the Government provided sufficient notice of the charges against the accused. The Defense was not obligated to further ask the Government, "Are you sure you don't mean information? It looks like you probably meant information, so maybe you should change the charge sheet before referral."

25. This entire case proceeded on the theory that PFC Manning stole or converted the "databases"—that is why the Government adduced, and was permitted to adduce, evidence of the creation of a database. The Government's actions in seeking out witnesses and presenting a large volume of evidence related to the creation of the database makes it clear what the Government really sought to prove: that PFC Manning stole databases. It is ironic that the Defense was supposed to read into the word "database" the concept of information, all while the Government was doing its best to present every bit of available evidence valuing the actual CIDNE, NCD and SOUTHCOM databases (excluding the value of the information).

E. The Defense is Still Not Clear on What PFC Manning is Alleged to Have Stolen and How that Can be Valued

26. The Defense believes, based on the Court's Ruling, that the Government no longer has to prove that PFC Manning stole "databases" in the sense of the actual CIDNE, NCD, or SOUTHCOM databases (i.e. the receptacle for records). However, the Government has already admitted a mountain of evidence on the actual value of these databases. Apparently, even though the Government did not know it, all that evidence was entirely irrelevant to proper

valuation to what the Government should have charged (copies of records or information).[3] So now the Defense is supposed to read "database" as really signifying "records" or "information.

27. The Defense submits that PFC Manning did not steal or convert original records; and to the extent that he stole or converted anything, it was a copy of those records. The Court has accepted the Government's view, completely unsupported by authority, that there is no difference between the two. So apparently, the Government is permitted to argue that PFC Manning stole copies by giving records to WikiLeaks, but gets to value the original records. The Defense is not sure what exact method of valuation the Government will rely on and has not had an opportunity to cross-examine on this issue or request clarification at a meaningful juncture of these proceedings. The Defense submits that the cost of production of records is the time it takes for someone to enter the records onto a database. The Government has not introduced any evidence of this, so the Defense assumes that the Government will argue that the cost of harnessing and assimilating the information that eventually goes into the record is appropriate for cost of production. So, for instance, if it took 3 years to compile a detainee assessment brief, then 3 years of JAG time, commander time, etc. would establish the cost of production (such that the one detainee assessment brief might be worth $500,000). The Defense submits that this is not a permissible valuation method for a record. But the key point is that the Defense has not had any opportunity to contest this method of valuation—because the case is already over and the Defense did not know until today that the Court would permit valuation of an original record when what was allegedly stolen was a copy or information. The Government may alternatively try arguing a "cost of production" for information. No court, to the Defense's knowledge, has allowed such a valuation theory to proceed. The point is that at this late date, the Defense is still not clear on what valuation methods are permitted and for what property. But even if it were, there is nothing the Defense can do about this, since the parties are on the eve of closing arguments.

F. The Amendments That Allege "A Portion" of the GAL or of a Database is a Major Amendment and Has Caused Unfair Prejudice

28. The Court believes that changing Specification 16 of Charge II to read that PFC Manning stole or converted "a portion" of the GAL is not a major amendment. The Defense disagrees and believes that this is a major amendment that seriously prejudices the accused and warrants relief under R.C.M. 915.

29. The Defense did not focus its questioning on establishing whether the military addresses found on PFC Manning's computer constituted a subset of the USF-I GAL; it focused its questioning on whether the addresses constituted the USF-I GAL. If the Defense had known that the charge would shift from being "the USF-I GAL" to "a portion of the USF-I GAL", the Defense would have questioned Government witnesses on whether the email addresses found on his computer comprised a "a portion" of the USF-I GAL and the basis for that opinion. The Defense would not have simply let what would appear to be irrelevant statements go unchecked if it now knew it was now defending against PFC Manning stealing "a portion" of the USF-I

[3] The fact that the Government itself was incredibly confused on what it was valuing (the database, to include it supporting infrastructure) suggests that the Defense's belief as to the identity of the allegedly stolen property was entirely reasonable.

GAL (e.g. it would have cross-examined Chief Nixon further on his statements regarding his opinion that this might be the Division GAL).

30. Further, the Defense would also have focused its questions regarding valuation on the value of a subset of the USF-I GAL, not on the value of the USF-I GAL as a whole. The Defense would have also objected to the Government eliciting testimony about the value of the USF-I GAL as a whole if the Government was merely proving that PFC Manning took "a portion" of the USF-I GAL.

31. Similarly, the amendment that PFC Manning stole a "portion" of a database is a major amendment because it impeded the ability of the Defense to cross-examine on the value of a "portion" of the database. The Defense would have interviewed witnesses and ascertained for itself what the cost of production of these records would be. The Defense would not be left simply hoping that the Government has not met its burden of proof.

CONCLUSION

32. It is clear from federal case law that "records" and "information" are different things. The Court's conflating of "database" and "records" and "information," after the close of evidence, is not a fair or accurate reading of the law and unfairly prejudices the accused in this case.

33. The Government has pushed this case beyond the bounds of legal propriety. If the Government meant "information", it should have charged information. We should not have to rely on Black's Law Dictionary to get us there. If the Defense knew that the property allegedly stolen was "information" it would have proceeded in an entirely different fashion. This is true as well if the Defense knew that the Court would allow the Government to value original records when no original records were stolen or converted.

34. Because all of these critical "clarifications" are coming after eight weeks of testimony, and because these offenses carry with them 50 years of potential imprisonment, and because the Defense was actually misled by the Charge Sheet, the Defense requests that this Court declare a mistrial as to the section 641 offenses. The accused is still facing the prospect of life in prison (due to what the Defense submits is an unprecedented Article 104 charge). There is no need to mar the appellate record in such a way that it clear that a substantial doubt is cast upon the fairness of these proceedings.

Respectfully submitted,

DAVID EDWARD COOMBS
Civilian Defense Counsel